

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Amendment of Part 90 of the)
Commission's Rules to Facilitate)
Future Development of SMR Systems)
in the 800 MHz Frequency Band)

PR Docket No. 93-144
RM-8117, RM-8030
RM-8029

Implementation of Sections 3(n) and 322)
of the Communications Act)
Regulatory Treatment of Mobile Services)

GN Docket No. 93-252

Implementation of Section 309(j))
of the Communications Act --)
Competitive Bidding)

PP Docket No. 93-253

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To: The Commission

CONSOLIDATED COMMENTS ON PETITIONS FOR RECONSIDERATION

Pursuant to Section 1.429 of the Commission's Rules, UTC, The
Telecommunications Association (UTC),¹ respectfully submits the following comments
on a number of the "petitions for reconsideration" filed on the rule changes adopted in the
First Report and Order (First R&O) in the above-captioned proceeding.²

¹ UTC, The Telecommunications Association, was formerly known as the Utilities
Telecommunications Council.

² On April 12, 1996, Public Notice of these petitions was provided in the Federal Register, 61
Fed. Reg. 16252.

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As the national representative on communications matters for the nation's electric, gas and water utilities and natural gas pipelines, UTC has been an active participant throughout this proceeding. In fact, UTC has itself filed a "petition for reconsideration" regarding the reallocation of the 800 MHz General Category channels to the exclusive use of commercial systems. UTC is therefore pleased to offer the following comments on a number of the petitions for reconsideration.

I. The FCC's Reallocation Of The General Category Channels Is Contrary To Public Interest

The *First R&O* is part of a series of on-going proceedings to establish service rules and auction procedures for the licensing of wide-area Specialized Mobile Radio (SMR) systems in the 800 MHz band. As part of this proceeding the Commission reallocated the 150 channels that comprise the General Category from their historic designation as frequencies that were available for licensing by both private and commercial radio systems to being exclusively available to SMRs. A large number of petitioners echo UTC's own petition in arguing that FCC's decision to reallocate the General Category channels is not supported by the public record and is contrary to the public interest.³

As the petitions by APCO, Coral Gables, Consumers Power, Entergy and GM make clear, in many areas of the country public safety agencies, public service utilities and large industrial entities have been forced to rely on access to the 800 MHz General

³ Petitions for Reconsideration of Association of Public-Safety Communications Officials-International (APCO), City of Coral Gables, Consumers Power, Entergy, General Motors (GM) and Industrial Telecommunications Association (ITA).

Category channels to implement their essential systems because the dedicated Public Safety and Industrial/Land Transportation (I/LT) channels have become exhausted. The FCC's decision to reallocate the General Category channels to the exclusive use of commercial services will, in effect, cutoff a vital safety-valve for these essential services. Noting the FCC's joint sponsorship with the Department of Commerce of the Public Safety Wireless Advisory Committee, APCO characterizes the Commission's reallocation decision as "ironic at best and hypocritical at worst."⁴ Entergy states that the Commission's *First R&O* will "seriously compromise" its ability to maintain its 800 MHz system and to meet internal and customer service demands.⁵ Consumers Power describes the FCC's decision as an "insupportable abdication of the Commission's responsibility to provide for the mobile communications requirements of internal use, private mobile radio systems."⁶

A. The FCC Provided Insufficient Notice of Its Intentions

UTC agrees with a number of the petitioners that the FCC provided insufficient public notice to interested parties of the true nature and scope of its intentions regarding the General Category channels. As Coral Gables notes, the record is essentially void of public safety comments, and that this is substantially due to the Commission's failure to give adequate notice that it would be taking actions having such a direct and adverse impact on

⁴ APCO, p. 3.

⁵ Entergy, p. 2.

⁶ Consumers Power, 8.

public safety licensees.⁷ From all outward appearances the underlying proceeding was one that dealt with and focused on SMRs and the use of SMR spectrum. In detailing the inadequacy of the Commission's notice to the private land mobile community of the potential impact of this proceeding, Entergy points out that neither the title, table of contents nor the summary of the FCC's *Further Notice of Proposed Rulemaking* indicate that the Commission was considering re-allocating the General Category channels.⁸

Given the Commission's failure to provide adequate notice to interested parties of the significant adverse impact that this proceeding could have on their critical systems, it is incumbent upon the FCC to reconsider this decision. At a minimum, the FCC should reopen the proceeding for an additional round of comments in order to develop a full and complete record on the basis of input from all impacted parties.

B. The FCC Failed To Justify Its Reallocation Of The General Category Channels

In its petition Coral Gables states, "Even more distressing than the lack of adequate prior notice is the fact that the First Report and Order does not even acknowledge, much less offer a justification for, the effect of this unexpected reallocation."⁹ UTC agrees. Far from suggesting a pending reallocation of the General Category channels to commercial-use only, earlier stages of this proceeding actually indicated that the Commission was inclined to restrict future SMR access to all or some of the General Category channels.

⁷ Coral Gables, pp. 2-3.

⁸ Entergy, p. 8.

⁹ Coral Gables, p. 3

GM correctly points out that under appropriate circumstances the FCC may lawfully change its policies, however, the Commission must supply a reasoned analysis indicating that its prior standards are being deliberately changed and not blithely cast aside.¹⁰ UTC agrees with GM that in this instance the Commission has failed this test. Rather than attempting to reconcile its prior expressed concern over the scarcity of availability of spectrum for private, non-SMR users, the Commission has casually reallocated the General Category channels and aggravated the spectrum shortage for private users.

Rather than providing a detailed or reasoned basis to justify the FCC's wholesale reallocation of the General Category channels to commercial services, the FCC relies on a oversimplistic and misleading count of license records to support its conclusion that "the demand for additional spectrum by SMR providers is significantly greater than the demand by non-SMRs." ITA indicates that the available data does not support the Commission's conclusion that the overwhelming majority of General Category channels are used for SMR as opposed to non-SMR service. ITA notes that even including all of the licenses held by speculative SMR applicants, a full one-fourth of all of the licenses issued for the General Category channels are for non-SMR systems.¹¹ In order to arrive at an objective understanding of General Category usage, UTC renews its request that the FCC conduct an audit of the major urban areas to assess the nature of actual General Category usage. UTC

¹⁰ GM, p. 4.

¹¹ ITA, p. 6.

strongly believes that such an investigation would reveal a much higher percentage of non-SMR usage of the General Category channels.

For all of the above reasons, the FCC should immediately reinstate non-SMR access to the General Category channels. The General Category should be available on a prospective basis for private land mobile radio licensees and any incumbents that are relocated from the upper 200 channels in the 800 MHz band. To the extent purely speculative applications by SMRs have effectively shut-down further licensing in many areas of the country, UTC recommends that the FCC take actions to dismiss those applications.¹² If such action is taken, the public interest will be served by making the General Category channels available for private licensees and relocated incumbents who truly need access to this spectrum.

II. The FCC Should Clarify Protections For Border Areas In The Upper 10 MHz Channel Block

UTC agrees with Consumers Power that the FCC must take steps to clarify that the upper 10 MHz block channels in border areas that are not assigned to the SMR category are not subject to the new wide-area EA licensing or the mandatory relocation rules.¹³ Such clarification is necessary because in the Canadian border area channels in the upper

¹² Legitimate incumbent SMRs that have business plans and intend to actually construct facilities pursuant to reasonable timetables should be allowed to remain in the General Category.

¹³ Consumers Power, pp. 6-8.

10 MHz block are often assigned to non-SMR categories and are therefore inappropriate for EA SMR licensing.

Moreover, such a clarification is vital to ensure that EA licensees do not assume that they have a right to employ the FCC's mandatory relocation process to remove non-SMR incumbents from border area channels. While the *First R&O's* grant of mandatory relocation rights did not distinguish between SMR and non-SMR incumbents, the underlying assumption was that the encumbered spectrum was itself allocated to commercial use. This should be distinguished from the relocation of non-commercial licensees from non-commercial spectrum, a result which is not contemplated or required by this proceeding.

III. Conclusion

The FCC's decision to reallocate the General Category channels is not supported by the public record, and is contrary to the public interest. The *First R&O* does not provide a detailed or reasoned basis to justify the FCC's the wholesale reallocation of the General Category channels to commercial services. The FCC should immediately reinstate non-SMR access to the General Category channels.

WHEREFORE, THE PREMISES CONSIDERED, UTC requests the Federal Communications Commission to take action in accordance with the views expressed in these comments.

Respectfully submitted,

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